1950

Kannada

File No. S. DWR 5/50

Legal department

A BRANCH

Subject:— Dharwar Suit:-

Civil suit No. 223 of 1949

Bhispadrao Shamaji Karaguddi — Plff

Vs.

Dy Registrar, Coop. Societies
Southern Circle, Belgaum } Defts.

For possession of Suit premises
and mesne profits

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1/10

S. DWR 5/50

File No.

Gen. Ins—6503—1,00,000—8-42—sk.

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CONTENTS.

Legal Department File No. SI. DWR 5/50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Dharwar.	
		C. S. No. 223 of 1949.	
		Shripadrao Shamaji Karaqudri	
		Vs.	
		The Deputy Registrar.	
		For possessim of suit premises and mesne profits	
			1-24

— Letter. —

To

The Secretary to Government,
Development Department,
BOMBAY.

IT DEPARTMENT
607
25 OCT 1949
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D.

No. TRY/9 Poona, the 20th October 1949.

Subject:- Auditor C.S., Haveri.
Civil Suit for ejecting---

A Civil Suit has been filed against the Deputy Registrar, C.S., Belgaum by one Mr. S.S.Karagundari, Land-lord of the premises till recently occupied by the Auditor Co-operative Societies, Haveri for holding his office for obtaining possession office premises, recovery of Mesne income and cost of the Suit etc.,. The information required in accordance with the provision contained in Rule 119 of th Rules for the conduct of the Legal Affairs of Government is furnished herewith. The Circumstances which led to the filing of the Suit are as under:-

2. The office of the Auditor C.S., Haveri was located in the building(C.S.No. 3348) of the plaintiff for a number of years. Recently one of the members of the Auditor's staff was alleged to have misbehaved with a woman residing in the said building. The Criminal suit which was instituted was dismissed by the Court. However, taking advantage of the incident, the Land-lord served the Deputy Registrar, C.S., Belgaum with a notice in October 1948 for vacating the premises and handing him over vacant possessions by the end of December 1948. The Land-lord was informed on 30th November 1948 in reply to the notice that no suitable building for holding the office of the Auditor was available and that his building would be vacated as soon as one is found by the Auditor, who was asked to be in search. The Land-lord was further informed that if he took any legal steps it would be at his own risk as to cost and consequer

-ces-

It appears that after waiting till the end of May 1949 the Land-lord filed a suit against the Deputy Registrar; C.S., Belgaum seeking the following relief.

a) To handover the possession of the property under suit to the plaintiff from the defendent.

b) To decide the mesne income as Rs 75/- from January 1949 upto the end of May 1949 and to give the same to the plaintiff by recovering the same from the the Department to which the defendent belongs.

c) To decide the mesne income from the date of suit upto the actual possession of the property and give it to the plaintiff.

d) To reimburse the cost of the proceedings in the Court, as deemed proper by the Court.

3. It would be seen from the Marginal remarks against paragraphs 7 & 11 of the plaint that the Auditor has already vacated the premises on 1st October 1949 and the Land-lord has accepted rent at the contract rent of Rs 10/-P.M. upto the end of May 1949. I am separately asking the Deputy Registrar to ascertain whether in view of the fact that the premises have already been vacated and the rent paid upto the end of May 1949, the Land-lord is prepared to withdraw the suit without any claim as to cost on accepting the rent for the remaining period.

4 The first hearing of the Suit was fixed on 30-9-49 and the second on the 14-10-1949. The Sub-Government Pleader at Haveri who has been asked by the Deputy Registrar to appear on behalf of Government has, it is presumed, asked for time again.

5 In the circumstances pending receipt of reply from the Deputy Registrar, I would request that Government may forward the papers to the Legal Department for ~~sanctioning the defence of the Suit~~.

sanctioning the defence of the Suit.

Registrar,
Co-operative Societies, B.P., Poona

(enclosure - 1)

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2 (l)

In the Civil Sub-Judge Court, Haveri.

No.LC.S.No.223/1949.

1) Shripadrao Shamaji Karagudri)
Caste Brahmin, Occupation Landlord,) Plaintiff.
Age 78, Resident of Haveri, now)
residing at Hubli.)

Vs.

1a) The Deputy Registrar, Coop.Societies,) Defend-
S.C. Belgaum.) ent.

of-

The amount, the ~~xix~~ suit.

The plaintiff informs the Court in this connection the following particulars.

1) House C.S.No.3348 in Haveri town of the Dharwar District situate in the area belonging to the plaintiff.

2) There are about 15 houses in the said area in which generally the Govt.servants reside with their families on rental basis. But in the house referred to in the suit, the office of the Auditor of the defendent is accommodated, in which not the family people reside, but the clerks do their work and also reside. They are on tour for about 20 days in a month and during the remaining 10-11 days they reside in the said office.

Incorrect. No staff is using it for residential purpose.

3) The defendent has hired the said house from the plaintiff since many years on a rent of Rs.10/- p.m. and has obtained vouchers for the rent, the rent being paid at his convenience.

The rent was paid as soon as the rent bills were cashed from the Treasury.

4) In the meahwhile one of the clerks of the said office on one morning at about 6 A.M. outraged with bad intention the modesty of a woman residing in the said Chawl, aged about 18-20 years, who had been to the latrine. There was a row and hubbub about this, and some people in the Chawl gathered on the scene and there was scuffle between the parties and a criminal complaint was filed in the Court and the matter ended in a compromise between the two parties.

This incorrect. Complaints were dismissed by the Court. Copy of letter from the Court addressed to the Auditor, C.S.Haveri is enclosed.

The plaintiff knew of all this later. The plaintiff

is residing with his son at Hubli since 3 yea account of (——) illness.

5) When the plaintiff learnt the said news, he thought it not proper to allow the office of the defendent to continue in the said Chawl and accordingly gave a legal notice to the defendent to vacate the house and give it to his possession. The said notice was given at the end of October 1948 to vacate the house by the end of December 1948 (i.e. after a period of 60 days). The said notice is given both to the defendent and the Registrar Coop. Societies. A reply to this is received from the defendent on 30-11-1948 in which he informs as under. "Since no other suitable building is available at Haveri for holding the office, it is not possible to vacate the building at present. The Auditor is however asked to search for a suitable building for holding his office. Your building would be vacated when a suitable building would be available. If, however, you take any legal steps in the matter, it will have to be at your own risk as to cost and consequences etc. A copy of the same is produced.

Yes. Prior to this he had requested to increase the monthly rent from Rs.10/- to Rs.12/- which he was refused.
This office is not aware whether he has given a notice to the Registrar.

Yes. The owner is informed accordingly, since the Auditor, C.S. Haveri on enquiry reported that no suitable building was available.

6) After this correspondence between the two, the plaintiff waited till March 1949 thinking by which time the defendent might search a building sufficient to accommodate the office and vacate the building of the plaintiff. But it seems nobody on behalf of the defendent ever tried to search and secure a suitable building. Hence the plaintiff informed the defendent by Regd.letter on 3-3-1949 as to why his office people are unwilling to search for another house (so far as the plaintiff is aware of). To this a reply received from the defendent on 25-3-1949 is produced now. In this, it is stated chiefly that a suitable building is not yet available. As soon as such a building is available, the House of the plaintiff would be vacated etc. That a suitable building was not available or could not be secured at Haveri is false. Why his office

This is incorrect. The Auditor reports that inspite of his best efforts he could not secure a suitable building. Copy of his letter regarding the attempts made by him to secure a suitable building is enclosed.
The reasons are merely flimsy & imaginary, since Govt. have never refused to grant reasonable rent certified by the Executive Engineer.
Yes. The owner is again informed accordingly as no building was yet available inspite of serious efforts made by the Auditor.

people are not willing to vacate the said house is made clear in the letter of the plaintiff dated 3-3-49 and no clarification came forth from the defendent in this respect. If the defendent does not produce the said letter, the plaintiff will produce a copy of the same.

This is incorrect. It was made clear that Govt. would pay any reasonable rent certified by the Executive Engineer (copy of reply is enclosed)

7) It is more than 7 months since the defendent is in receipt of the first notice, and they do not appear to make attempts to search another building and vacate the house of the plaintiff. Had they tried to get another building, they could have surely got one building. It seems they think that if they continued to say that no suitable building was available, nobody could make them vacate the present building. Had the defendentix heartily searched for a suitable building, one such building could have been secured. Even now, it can be secured. The defendent has no other reason than that he has to pay a higher rent in these present days and that even if another building with equal convenience is not available, he should make the best use of the house available to him.

Attempts are made by the Auditor, vide copy of his reply.

This is incorrect His building is vacated on 1st of October 1949 when a building could be secured.

8) Cause of suit:- Since the plaintiff gave a notice to the defendent at the end of October 1948 to vacate the said house by the end of December 1948, the plaintiff was to get the possession of the said house from the beginning of January 1949. Hence the cause of the suit. The property of the suit is in the jurisdiction of the Court and this Court has the power to enquire into.

This is simply presumption of the Plaintiff. He has been informed that Govt.ix always pays reasonable rent certified by the Ex. Engineer. Govt. office will have to be accommodated in a suitable building.

Legal points. Rent Resitriction Act and Acquisition Act will have to be referred to. In view of the reply given to the Landlord, he is not entitled to claim possession from Jan.1949. Since this is a Govt. case this ought to have been filed in a I Class Court. This Court has therefore no jurisdiction.

9) The defendent is occupying the house of the suit unlawfully since January 1949, he is liable to pay the mesne income from that date. In these hard days a monthly rent of Rs.20/- has to be paid to the house under suit. But the plaintiff without expecting much, demands the mesne income of Rs.15/- p.m.

-do-

10) Particulars of suit.

-do-	Possession of the house under Suit	
	Rent for one year.	Rs.120/-

45-41

Mesne income prior to the cause of suit - upto end of May 1949 at the rate of Rs.15/- for 5 months. Rs.75/-

Rs.195/-

In addition Court Fee, Stamp fee, and fees of the Pleader have to be awarded.

11) Plaintiff's request.

a) to consider the above matter and to give the possession of the property under suit to the plaintiff from the defendent.

based on point 8.

Rent of Rs.10/- p.m. as per contract has been paid and received by the owner upto the end of May 1949.

b) to decide the mesne income as Rs.75/- from January 1949 upto end of May 1949 and to give the same to the plaintiff by recovering the same from the Department of the defendent.

Based on point 8.

-do-

c) To decide the mesne income from the date of suit upto the actual possession of the property and to give it to the plaintiff.

-do-

d) to give the cost of the proceedings in the Court, as deemded proper by the Court.

It is requested to pass the decree accordingly.

Letter.

13 29 47

To

The Registrar of Co-operative Societies,
Bombay Province, Poona.

No.TRY-9. Belgaum, October 24th, 1949.

Please refer to this office letter of even No. dated 11-10-1949 enclosing thereunder all the case papers in connection with the suit filed by Mr. S.S. Karagudri, owner of the previous office building of Auditor, C.S., Haveri.

2. The suit was filed in the Court on 16-8-1949.

3. An extract copy of letter No. 870 dated 12-10-1949 from the Auditor, C.S., Haveri regarding attempts made by him to secure another building for holding his office is enclosed.

4. In addition to the reasons already given in C-iii for defending the case, following also may be considered.

(7) No regular notice under Section 80 of the Civil Procedure Code is given.

(8) As this is a case against Provincial Government, this ought to have been filed in a, I, class Court.

(9) The Plaintiff had given notice on 6-2-1948 to vacate the building, stating that he wanted the building for his personal use, but in fact, he has rented it out at Rs.15/- p.m. to a Departmental person, immediately after it is vacated by the Auditor, C.S., Haveri on 1-10-1949.

From this, it is clear that the Plaintiff is only after increased rent.

(10) The Plaintiff has been paid the contract rent of Rs.10/- p.m. up to the end of July 1949 and the bills for August and September 1949 have been sent to the Auditor, Co-operative Societies, Haveri, duly passed, for encashment and disbursement of the amount to the Plaintiff.

As such, no amount is due to him. He is not entitled to any mesne income, since he is not eligible for any increased rent as per provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

(11) Since the plaintiff has filed a suit against Government insite of clear reply from this office that he is himself responsible for cost and consequences, the Court may be requested to decree that the cost incurred by Government in this case, should be paid by plaintiff.

Sd. x x x

Deputy Registrar, C.S.,
S.C., Belgaum.

Haveri C.S.No. 223 of 1949. 15-31

This suit is for possession of suit premises and mesne profits. The possession has been handed over and rent has been paid at the rate of Rs. 10 per month. Rent for two months is due but is likely to be paid shortly. The plaintiff is, however, demanding rent at Rs. 15 per month for the last 9 months (January to September) and this is the only point in dispute. The claim can be resisted as the landlord has waived his notice of termination by accepting rent. The suit is thus defensible.

Sanction may be accorded to the defence of the suit on the lines of the appended brief which is for approval. A written statement is also put up. The date for W.S. is 12-1-1949.

29/12

The suit cannot be entertained by the court of Civil Judge J.S. Haveri. Next entention should be added in the brief and W.S.

29/12/49

A.S.

~~A.L.A.~~

In Rep

Secy. D.P.

Resubmitted.

The brief and the W.S. has been amended as directed by A.S.

29/12

31/12

A.S. 31/12/49

~~A.L.A.~~ 31/12

~~Secy. D.P.~~

3.1.50

No. 10

3-1-1950

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In the Court of the Civil Judge, Junior Division, Haveri.
Civil Suit No.223 of 1949.

Shripadrao S. Karagudri. ..... Plaintiff;

Vs.

The Deputy Registrar, Co-operative Societies, Southern Circle, Belgaum. ..... Defendant.

The following is the written statement of the defendant.

1. It is submitted that this Court has no jurisdiction to entertain this suit against the Defendant who is an officer of Government.

2. The suit is barred for want of notice under section 80 of the Civil Procedure Code.

3. The suit is not maintainable against the defendant in his official capacity.

4. The suit ~~pxx~~ premises were rented at a monthly rent of Rs. 10 for the office of the Auditor, Co-operative Societies, Haveri. The premises have been vacated and possession has been handed over to the landlord on 1st October 1949. Rent at the agreed rate of Rs. 10 has been paid upto the end of July which the plaintiff has accepted.

5. It is denied that the tenancy was validly terminated. The tenancy was subsisting till date of delivery of possession on 1-10-1949 and the plaintiff is not entitled to any mesne profits.

6. The plaintiff is not entitled to any relief and his suit should be dismissed with costs.

Sub-Government Pleader, Haveri.

I, the Sub-Government Pleader, Haveri, do hereby declare that what is stated in paragraphs 1 to 6 above is true according to the information received and believed to be true. This verification is made at on the day of 1949.

K. 30/12.

Sub-Government Pleader, Haveri.

1947

Suits.

Dharwar.

For possession of suit premises and mesne profits.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 743.

Bombay Castle, 17th January 1950.

Letter from the Registrar, Co-operative Societies, Bombay Province, Poona, No. T.R.Y./9, dated 26th October 1949, addressed to the Secretary to Government, Development Department, Bombay—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL SUB-JUDGE, HAVERI.

CIVIL SUIT No. 223 OF 1949.

Shripadrao Shamaji Karagudri .. .. Plaintiff;

versus

The Deputy Registrar, Co-operative Societies, Southern Circle, Belgaum .. .. Defendant.

Memorandum to the Sub-Government Pleader, Haveri, No. 348, dated the 9th January 1950—Forwarding a copy of the brief with its accompaniments in advance.

[P.T.O.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R. No. 743, L. D., dated the 17th January 1950.

To

*Development Department,
*Registrar, Co-operative Societies, Bombay Province, Poona,
*The Commissioner, Southern Division,
The Sub-Government Pleader, Haveri (with two copies of the brief).

*With a copy of the brief.

No. of 1950

Copy forwarded for information and guidance to

Issued
CP
2/6/50

Subdt. after issue
File in S. Dharwar/50 (new)
3-6

HAVERI CIVIL SUIT NO. 223 OF 1949.

Chronological Statement of Facts.

This suit is filed by Shripadrao Shamaji Karagudri, against the Deputy Registrar of Co-operative Societies, Southern Circle, Belgaum, for recovery of possession of the suit premises, for mesne profits from January to May (end) 1949 at Rs. 15 per month future mesne profits and costs.

2. Suit premises bearing C. S. No. 3348 of Haveri were hired for the office of the Auditor, Co-operative Societies, Haveri, on a monthly rent of Rs. 10 since many years past. Recently, one of the members of the Auditor's Staff misbehaved with a woman residing in the building which led to a criminal case. Taking advantage of this incident, the landlord served a notice on the Deputy Registrar in October 1948 requesting him to vacate the premises. He was, however, informed that the premises would be vacated as soon as suitable alternative accommodation was found. Suitable accommodation was however, not available and the premises could not be vacated till the filing of the suit. The premises were later vacated on 1st October 1949.

3. On 16th August 1949, the plaintiff filed the present suit in the Court of the Civil Judge, Haveri, for the reliefs stated above.

Grounds of Defence.

The suit premises have been already vacated by the Auditor and possession has been handed over to the landlord on 1st October 1949. Therefore so far as the first prayer is concerned, it does not survive. The only point in dispute is therefore, about the rent. In this respect, the plaintiff's contention in brief is as follows :—He states that in October 1948 he gave a notice terminating the tenancy and demanded possession from the beginning of January 1949 ; and therefore he alleges that the Defendant is occupying the premises unlawfully since that date and is liable to pay mesne income from that date which is assessed at Rs. 15 per month. This claim of the plaintiff is untenable and should be resisted on the following grounds.

1. *Notice.*—The suit suffers from the fundamental defect of absence of notice under section 80 of the Civil Procedure Code. No notice under section 80 has been given either to the Deputy Registrar or to Government. The suit has been instituted against the Deputy Registrar in his official capacity and it was incumbent upon the plaintiff to serve him with the two months' statutory notice under section 80. The plaintiff will most probably reply that he had given a notice of termination of tenancy and no further notice was necessary. Such a contention would be untenable. A notice to quit does not dispense with a notice under section 80 of the Civil Procedure Code in respect of suits for possession of premises occupied by or on behalf of Government. The Sub-Government Pleader should therefore, contend that the suit is liable to be summarily dismissed in the absence of notice under section 80 and should move the Court for framing a preliminary issue on this point.

2. *Parties.*—The suit is also not maintenable against the Deputy Registrar of Co-operative Societies in his official capacity. He is a public officer and no public officer is liable to be sued in his official capacity unless he is a corporation sole (Mulla : Civil Procedure Code, 11th Edition p. 309).

3. *Jurisdiction.*—The suit is against the Deputy Registrar of Co-operative Societies, Southern Circle, Belgaum, in his official capacity. The Deputy Registrar is an officer of Government and the Court of the Civil Judge, Junior Division, Haveri, has no jurisdiction to entertain the suit. The suit should have been filed in the Court of a Civil Judge of Senior Division. (*See* section 32 of the Bombay Civil Courts Act, 1869). The Sub-Government Pleader should invite the court's attention to this position and urge that the court cannot proceed with the suit at all and that the plaint must be returned to the plaintiff for presentation to the proper court.

4. *Merits.*—The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, does not seem to have been applied to the Haveri town. The claim for increased rent cannot, therefore, be resisted on the basis of the provisions of the Rent Act. It can, however, be resisted on another ground. The plaintiff claims that as he had terminated the tenancy, he is entitled to mesne profits at the rate specified by him which is Rs. 15 per month. The notice of termination is not included in the papers and it is not known whether it is valid in law. Assuming that it was a valid notice, it appears that it was waived by the landlord by acceptng rent for the months January to June 1949 (*see* Mulla's Transfer of Property Act, 1882, 3rd Edition, pp. 729-730). The tenancy has therefore been continued and the landlord will not be able to claim mesne profits. He will be entitled to the agreed rent only which is Rs. 10 per month.

5. For all these reasons it should be urged that the suit fails and should be dismissed with costs.

-57-

Letter.

To

The Secretary to Government,
Legal Department, Bombay I.

L. D. 24 APR 1950

No. TRY.-9. Poona I: April 22, 1950.

Subject:- Auditor, Co-opve. Societies, Haveri.
Civil Suit for ejecting ..

Reference Government endorsement, D.D., No. 607-D. dated the 9th March 1950, forwarding a copy of my letter No. TRY.-9, dated 27th February 1950.

2. I enclose a copy of the letter, dated 10th April 1950, received from the Sub-Government Pleader, Haveri, on the above subject, from which it would be seen that the suit in question has already been heard and adjourned for judgment. A copy of Government Resolution, Legal Department, if any, sanctioning the defence of the suit and containing the brief, has not been received by me nor am I aware if any instructions have been issued by Government.

3. I should request that I may be enlightened in the matter.

Registrar, Co-opve. Societies, Bombay State,
Poona No. I.

Accompt. Copy.

--

Copy forwarded with compliments to the Secretary to Government, Development Department, Bombay.

Copy of letter dated 10-4-50, from the Subordinate Govt. Pleader, Haveri, Dist. Dharwar.

....

"With reference to your letter, dated 9-4-50, I have the honour to state that the suit against the Deputy Registrar for ejecting of the building occupied by the Auditor, Haveri, has been heard and is adjourned for judgment. As soon as the judgement is delivered, the result will be communicated immediately."

.....

Read 13/6

kN

CO-LABEL
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25-4-50
A

4.0.9 - 15/5

4 A.D.

(N)

Letter from the Rep. Cooperative
societies overleaf may pl. be
seen.

A copy of printed G.R. sanctioning
the deputn has been sent to them
on 2-6-50.

In the circumstances no
action seems necessary on this
letter

AE
14/6

AS Rajan